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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

DAVID ALLEN COOK,

Civ. No. 09-1034-CL

Petitioner,

v.

MARK NOOTH,

ORDER

Respondent.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Petitioner has filed objections. I have reviewed the file of this case de novo. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981).

I agree with the Report and Recommendation that petitioner procedurally defaulted on grounds two, three, and four. As to ground one, the Oregon Supreme Court's analysis of petitioner's Confrontation Clause claim was not contrary to, or an

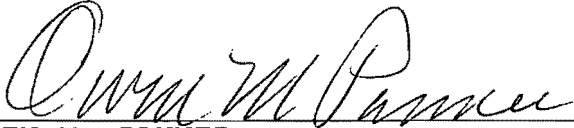
unreasonable application of, federal law, and was not based on an unreasonable determination of the facts. See State v. Cook, 340 Or. 530, 542-50, 135 P.3d 260, 267-72 (2006) (violation at trial of petitioner's rights under Confrontation Clause was harmless error).

CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#37) is adopted. The petition (#1) is dismissed with prejudice. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied. See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 4 day of April, 2011.


OWEN M. PANNER
U.S. DISTRICT JUDGE